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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/436,455	11/08/1999	CHRISTOPHER JAMES DANEK	435712000921	6666

25226 7590 07/24/2002  
MORRISON & FOERSTER LLP  
755 PAGE MILL RD  
PALO ALTO, CA 94304-1018

EXAMINER

SHAY, DAVID M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 07/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/436455

Applicant(s)

Daneh

Examiner

J. Jhy

Group Art Unit

3739

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE —3— MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on December 31, 2001
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-84 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-84 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-5, 16-30, 32, 35-42, 42, 66-68, 70-76 and 79-82 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Fleischman et al.
3. Claims 1-11, 14-19, 21-33, 38-40, 44, 45, 54-65, 70, 71, 74, and 79-82 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Jackson et al.
4. Claims 34, 42, 43, 53, 68, 69, 72, 73, and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. Jackson et al teach a device such as claimed except specifically calling for sterilization, the visuazation system; electricially conductive paint; locating the temperature detector between the leg and the resistively heated element, forming the legs from a single sheet of stainless steel; and including an optical fiber and CCD. It would have been obvious to employ these measures since they are notorious in the medical arts official notice which has been taken; since they provide no unexpected result; and since they are not critical, thus producing a device such as claimed.
5. Applicants argue that Jackson et al teach the use of an electrically insulating adhesjve to bond the temperature sensor to the legs. The examiner must respectfully note this is merely one of the embodiments of Jackson et al for while other embodiments, such as that disclosed in the paragraphs bridging columns 24 and 25 of Jackson et al example.
6. Claim 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Spears et al in combination with Waksman et al. Spears et al teach the modification of a

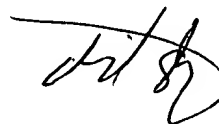
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smooth muscle structure by dialation and heating to creat<sup>e</sup> a larger opening therein. Waksman et al teaches the equivalence of smooth muscle cell treatment in various smooth muscle structures such as blood vessels and bronchi. It would have been obvious to the artisan of ordinary skill to employ the method of Spears, et al on a constricted bronchi, since this is equivalent to a constricted blood vessel, as taught by Waksman et al, thus producing a modified lung such as claimed.

Any inquiry concerning this communication should be directed to David Shay:at telephone number (703) 308-2215

David Shay:bhw

June 21, 2002



DAVID M. SHAY  
PRIMARY EXAMINER  
GROUP 330